

U.S. District Court
Western District of Missouri (Springfield)
CIVIL DOCKET FOR CASE #: 6:10-cv-03305-RED
Internal Use Only

Stebbins v. Richardson et al
Assigned to: District Judge Richard E. Dorr
Case in other court: 11-01977
11-08013
Cause: 28:1332 Diversity-Employment Discrimination

Date Filed: 08/02/2010
Date Terminated: 10/11/2011
Jury Demand: None
Nature of Suit: 442 Civil Rights: Jobs
Jurisdiction: Diversity

Plaintiff**David Stebbins**

represented by **David Stebbins**
8527 Hopewell Rd.
Harrison, AR 72601
(870) 204-6024
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PRO SE

V.

Defendant**Richardson Randal**

represented by **Gary W. Allman**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**Reliable Heat &Air, LLC**

represented by **Gary W. Allman**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Page	Docket Text
08/02/2010	<u>1</u>		MOTION for leave to proceed in forma pauperis filed by David Stebbins. Suggestions in opposition/response due by 8/19/2010 unless otherwise directed by the court. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Complaint, # <u>3</u> Exhibit, # <u>4</u> Civil Cover Sheet)(Howard, Linda) (Additional attachment(s) added on 8/2/2010: # <u>5</u> Envelope) (Howard, Linda). (Entered: 08/02/2010)
08/02/2010	<u>2</u>		

		Notice of EAP assignment to an outside mediator. (Attachments: # <u>1</u> EAP General Order)(Howard, Linda) (Entered: 08/02/2010)
08/12/2010	<u>3</u>	ORDER granting <u>1</u> motion for leave to proceed in forma pauperis; pltf to file complaint within 15 days. (Schroeppel, Kerry) Modified on 8/13/2010 copy of order mailed to plt (Howard, Linda). (Entered: 08/12/2010)
08/16/2010	<u>4</u>	PRO SE MOTION for order — Motion to Have Marshal Serve Complaint — filed by David Stebbins. Suggestions in opposition/response due by 9/2/2010 unless otherwise directed by the court. (Burch, C. Steve) (Entered: 08/16/2010)
08/16/2010	<u>5</u>	PRO SE MOTION for order — Motion to Be Excluded from Participation in EAP — filed by David Stebbins. Suggestions in opposition/response due by 9/2/2010 unless otherwise directed by the court. (Burch, C. Steve) (Entered: 08/16/2010)
09/24/2010	<u>6</u>	ORDER granting <u>4</u> pltf's motion to have marshal serve complaint; granting <u>5</u> pltf's motion to be excluded from EAP. (Schroeppel, Kerry) (Entered: 09/24/2010)
09/27/2010	<u>7</u>	COMPLAINT against Richardson Randal, Reliable Heat & Air, LLC by David Stebbins. Filing fee \$0, receipt number ifp. Service due by 1/28/2011. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Civil Cover Sheet)(Siegert, Karen) Modified on 9/27/2010 (Siegert, Karen). (Entered: 09/27/2010)
09/27/2010		SUMMONS ISSUED as to All Defendants. (Siegert, Karen) (Entered: 09/27/2010)
09/27/2010		***Remark USM-285 form along with copy of order (doc. 6), summons and complaint copy delivered to UMS for service. (Siegert, Karen) (Entered: 09/27/2010)
10/30/2010	<u>8</u>	MOTION to appoint counsel filed by All Plaintiffs. Suggestions in opposition/response due by 11/18/2010 unless otherwise directed by the court. (Stebbins, David) (Entered: 10/30/2010)
11/04/2010	<u>9</u>	ORDER denying <u>8</u> motion to appoint counsel. Signed on 11/4/10 by District Judge Richard E. Dorr. (Siegert, Karen) (Entered: 11/04/2010)
11/05/2010	<u>10</u>	First MOTION for order to <i>appoint expert</i> filed by All Plaintiffs. Suggestions in opposition/response due by 11/22/2010 unless otherwise directed by the court. (Stebbins, David) (Entered: 11/05/2010)
11/08/2010	<u>11</u>	RETURN OF SERVICE of complaint executed by David Stebbins. Richardson Randal served on 10/25/2010, answer due 11/15/2010; Reliable Heat & Air, LLC served on 10/25/2010, answer due 11/15/2010. (Burch, C. Steve) (Entered: 11/08/2010)
11/16/2010	<u>12</u>	First MOTION for default judgment filed by All Plaintiffs. Suggestions in opposition/response due by 12/3/2010 unless otherwise directed by the court. (Stebbins, David) (Entered: 11/16/2010)
11/18/2010	<u>13</u>	ANSWER to <u>7</u> Complaint, on behalf of Richardson Randal, Reliable Heat & Air, LLC.(Howard, Linda) (Entered: 11/18/2010)
11/18/2010	<u>14</u>	

		First MOTION for order <i>to impose sanctions for filing a frivolous defense</i> filed by All Plaintiffs. Suggestions in opposition/response due by 12/6/2010 unless otherwise directed by the court. (Stebbins, David) (Entered: 11/18/2010)
11/19/2010	<u>15</u>	ORDER denying <u>12</u> motion for default judgment. (Schroeppel, Kerry) (Entered: 11/19/2010)
11/19/2010	<u>16</u>	NOTICE OF PRETRIAL PROCEDURE, proposed scheduling order ddl 12/30/2010, rule 26 conference ddl 12/9/2010. (Schroeppel, Kerry) (Entered: 11/19/2010)
11/19/2010	<u>17</u>	PROPOSED SCHEDULING ORDER <i>AND DISCOVERY PLAN</i> by Richardson Randal, Reliable Heat & Air, LLC, David Stebbins. (Stebbins, David) (Entered: 11/19/2010)
11/19/2010	<u>18</u>	CERTIFICATE OF SERVICE by All Plaintiffs on behalf of Plaintiff David Stebbins.(Stebbins, David) (Entered: 11/19/2010)
12/06/2010	<u>19</u>	ORDER denying <u>10</u> motion to appoint expert. (Schroeppel, Kerry) (Entered: 12/06/2010)
12/13/2010	<u>20</u>	ORDER denying <u>14</u> motion to impose sanctions. (Schroeppel, Kerry) (Entered: 12/13/2010)
12/16/2010	<u>21</u>	CERTIFICATE OF SERVICE by All Defendants <i>December 16, 2010</i> filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat & Air, LLC. (Attachments: # <u>1</u> Certificate of Service)(Allman, Gary) (Entered: 12/16/2010)
12/16/2010	<u>22</u>	CERTIFICATE OF SERVICE by All Plaintiffs on behalf of Plaintiff David Stebbins.(Stebbins, David) (Entered: 12/16/2010)
12/16/2010	<u>23</u>	First CERTIFICATE OF SERVICE OF INITIAL RULE 26 DISCLOSURES on behalf of Plaintiff David Stebbins.(Stebbins, David) (Entered: 12/16/2010)
12/17/2010	<u>24</u>	First MOTION for order filed by All Plaintiffs. Suggestions in opposition/response due by 1/6/2011 unless otherwise directed by the court. (Stebbins, David) (Entered: 12/17/2010)
12/22/2010	<u>25</u>	Notice of Filing, Request for Discovery by All Plaintiffs on behalf of Plaintiff David Stebbins.(Stebbins, David) Modified on 12/22/2010 to correct docket text(Anderson, Christy). (Entered: 12/22/2010)
12/23/2010	<u>26</u>	ORDER holding in abeyance <u>24</u> motion to relax dress code. (Schroeppel, Kerry) (Entered: 12/23/2010)
12/28/2010	<u>27</u>	First MOTION for partial summary judgment filed by All Plaintiffs. Suggestions in opposition/response due by 1/21/2011 unless otherwise directed by the court (Stebbins, David) (Entered: 12/28/2010)
12/31/2010	<u>28</u>	First MOTION for order <i>for telephone conference</i> filed by All Plaintiffs. Suggestions in opposition/response due by 1/18/2011 unless otherwise directed by the court. (Stebbins, David) (Entered: 12/31/2010)
12/31/2010	<u>29</u>	

		CERTIFICATE OF SERVICE by All Plaintiffs <i>Second Request for Admissions</i> on behalf of Plaintiff David Stebbins.(Stebbins, David) (Entered: 12/31/2010)
01/04/2011	<u>30</u>	ORDER denying as moot <u>28</u> motion for telephone conference. (Schroeppel, Kerry) (Entered: 01/04/2011)
01/05/2011	<u>31</u>	CERTIFICATE OF SERVICE by All Plaintiffs on behalf of Plaintiff David Stebbins.(Stebbins, David) (Entered: 01/05/2011)
01/07/2011	<u>32</u>	SUGGESTIONS in opposition to motion for summary judgment re <u>27</u> First MOTION for partial summary judgment filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat & Air, LLC. Reply suggestions due by 1/24/2011 unless otherwise directed by the court. (Related document(s) <u>27</u>) (Allman, Gary) (Entered: 01/07/2011)
01/07/2011	<u>33</u>	REPLY SUGGESTIONS re <u>27</u> First MOTION for partial summary judgment on behalf of Plaintiff David Stebbins. (Related document(s) <u>27</u>) (Stebbins, David) Modified on 1/10/2011 to change the document from "Suggestions in Support" to "Reply Suggestions", as Suggestions in Opposition had already been filed. (Burch, C. Steve). (Entered: 01/07/2011)
01/09/2011	<u>34</u>	CERTIFICATE OF SERVICE by All Plaintiffs on behalf of Plaintiff David Stebbins.(Stebbins, David) (Entered: 01/09/2011)
01/09/2011	<u>35</u>	Second MOTION for order <i>for Telephone Conference</i> filed by All Plaintiffs. Suggestions in opposition/response due by 1/27/2011 unless otherwise directed by the court. (Stebbins, David) (Entered: 01/09/2011)
01/10/2011	<u>36</u>	ORDER granting <u>35</u> <i>Motion for Telephone Conference</i> , teleconference set for 1/12/2011 10:00 AM. (Schroeppel, Kerry) (Entered: 01/10/2011)
01/11/2011	37	CERTIFICATE of counsel by Gary W. Allman on behalf of All Defendants (Allman, Gary) (Entered: 01/11/2011)
01/12/2011		NOTICE OF DOCKET MODIFICATION. A modification has been made to the document filed on 01/11/2011 as Document No. 37, Certificate of Counsel. The document has been deleted as the incorrect event was used when filing the document. Counsel will refile the document using the discovery Certificate of Service event. This is a text entry only – no document is attached. (Burch, C. Steve) (Entered: 01/12/2011)
01/12/2011	<u>38</u>	DOCUMENT WAS VACATED PER ORDER <u>42</u> DATED 1/21/11. ORDER denying <u>27</u> motion for partial summary judgment. (Schroeppel, Kerry) Modified on 1/24/2011 (Siegert, Karen). (Entered: 01/12/2011)
01/12/2011	<u>39</u>	First MOTION for reconsideration <i>of order denying motion for partial summary judgment</i> filed by All Plaintiffs. Suggestions in opposition/response due by 1/31/2011 unless otherwise directed by the court. (Stebbins, David) (Entered: 01/12/2011)
01/12/2011	<u>40</u>	Minute Entry. Proceedings held before District Judge Richard E. Dorr: TELEPHONE CONFERENCE held on 1/12/2011. To order a transcript of this hearing please contact Jeannine Rankin, 417–225–7713. (Siegert, Karen) (Entered: 01/12/2011)

01/12/2011	<u>41</u>	CERTIFICATE OF SERVICE by All Plaintiffs filed by Gary W. Allman on behalf of Plaintiff David Stebbins.(Stebbins, David) (Entered: 01/12/2011)
01/21/2011	<u>42</u>	ORDER granting <u>39</u> Motion for Reconsideration, vacating <u>38</u> Order; denying <u>27</u> Motion for Partial Summary Judgment. (Schroeppel, Kerry) (Entered: 01/21/2011)
01/21/2011	<u>43</u>	Second MOTION for reconsideration <i>on order denying motion for partial summary judgment</i> filed by All Plaintiffs. Suggestions in opposition/response due by 2/7/2011 unless otherwise directed by the court. (Stebbins, David) (Entered: 01/21/2011)
01/23/2011	<u>44</u>	CERTIFICATE OF SERVICE by All Plaintiffs <i>Third Interrogatory</i> on behalf of Plaintiff David Stebbins.(Stebbins, David) (Entered: 01/23/2011)
01/25/2011	<u>45</u>	DOCUMENT WAS VACATED PER ORDER <u>50</u> DATED 2/14/11. SCHEDULING & BENCH TRIAL ORDER: discovery ddl 5/18/2011, dispositive motions ddl 6/17/2011, pretrial teleconference set for 10/20/2011 02:00 PM, bench trial set for 10/31/2011 09:00 AM in District Courtroom 1, Springfield. (Schroeppel, Kerry) Modified on 2/14/2011 (Siegert, Karen). (Entered: 01/25/2011)
01/25/2011	<u>46</u>	DOCUMENT WAS VACATED PER ORDER <u>50</u> filed 2/14/11. RULES OF BENCH TRIAL. (Schroeppel, Kerry) Modified on 2/14/2011 (Siegert, Karen). (Entered: 01/25/2011)
01/25/2011	<u>47</u>	First MOTION for order Request for jury trial filed by All Plaintiffs. Suggestions in opposition/response due by 2/11/2011 unless otherwise directed by the court. (Stebbins, David) (Entered: 01/25/2011)
01/27/2011	<u>48</u>	ORDER denying <u>43</u> motion for reconsideration. (Schroeppel, Kerry) (Entered: 01/27/2011)
01/27/2011	<u>49</u>	CERTIFICATE OF SERVICE by All Plaintiffs on behalf of Plaintiff David Stebbins.(Stebbins, David) (Entered: 01/27/2011)
02/14/2011	<u>50</u>	ORDER granting <u>47</u> Pltf's Motion for Jury Trial; vacating <u>45</u> Scheduling and Bench Trial Order and <u>46</u> Rules of Bench Trial. (Schroeppel, Kerry) (Entered: 02/14/2011)
02/14/2011	<u>51</u>	AMENDED SCHEDULING & JURY TRIAL ORDER: discovery ddl 5/18/2011, dispositive motions ddl 6/17/2011, pretrial teleconference set for 10/20/2011 02:00 PM, jury trial set for 10/31/2011 09:00 AM in District Courtroom 1, Springfield.(Schroeppel, Kerry) Modified on 2/15/2011 (Siegert, Karen). (Entered: 02/14/2011)
02/14/2011	<u>52</u>	RULES OF JURY TRIAL. (Schroeppel, Kerry) (Entered: 02/14/2011)
02/16/2011	<u>53</u>	Third MOTION for order <i>scheduling a telephone conference</i> filed by All Plaintiffs. Suggestions in opposition/response due by 3/7/2011 unless otherwise directed by the court. (Stebbins, David) (Entered: 02/16/2011)
02/27/2011	<u>54</u>	Second MOTION for default judgment filed by All Plaintiffs. Suggestions in opposition/response due by 3/17/2011 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Stebbins, David) (Entered: 02/27/2011)

02/27/2011	<u>55</u>		SUGGESTIONS in support re <u>54</u> Second MOTION for default judgment on behalf of Plaintiff David Stebbins. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Related document(s) <u>54</u>) (Stebbins, David) (Entered: 02/27/2011)
03/01/2011	<u>56</u>		ORDER <u>53</u> <i>third motion to schedule telephone conference</i> ; telephone conference set for 3/4/2011 10:00 AM. (Schroeppel, Kerry) (Entered: 03/01/2011)
03/01/2011	<u>57</u>		CERTIFICATE OF SERVICE by All Defendants filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat & Air, LLC.(Allman, Gary) (Entered: 03/01/2011)
03/01/2011	<u>58</u>		First MOTION to strike <i>inadmissible evidence</i> filed by All Plaintiffs. Suggestions in opposition/response due by 3/18/2011 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(Stebbins, David) (Entered: 03/01/2011)
03/02/2011	<u>59</u>		ORDER vacating 3/4/2011 teleconference. (Schroeppel, Kerry) (Entered: 03/02/2011)
03/04/2011	<u>60</u>		CERTIFICATE OF SERVICE by All Defendants filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat & Air, LLC.(Allman, Gary) (Entered: 03/04/2011)
03/04/2011	<u>61</u>		CERTIFICATE OF SERVICE by All Plaintiffs on behalf of Plaintiff David Stebbins.(Stebbins, David) (Entered: 03/04/2011)
03/07/2011	<u>62</u>		CERTIFICATE OF SERVICE by All Defendants filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat & Air, LLC.(Allman, Gary) (Entered: 03/07/2011)
03/07/2011	<u>63</u>		MOTION for order re <u>59</u> Order <i>Renewing telephone conference</i> filed by All Plaintiffs. Suggestions in opposition/response due by 3/24/2011 unless otherwise directed by the court. (Related document(s) <u>59</u>) (Stebbins, David) (Entered: 03/07/2011)
03/08/2011	<u>64</u>		SUGGESTIONS in support re <u>63</u> MOTION for order re <u>59</u> Order <i>Renewing telephone conference</i> on behalf of Plaintiff David Stebbins. (Attachments: # <u>1</u> Exhibit Exhibit A, # <u>2</u> Exhibit Exhibit B)(Related document(s) <u>63</u>) (Stebbins, David) (Entered: 03/08/2011)
03/08/2011	<u>65</u>		SUGGESTIONS in support re <u>54</u> Second MOTION for default judgment , <u>63</u> MOTION for order re <u>59</u> Order <i>Renewing telephone conference</i> on behalf of Plaintiff David Stebbins. (Related document(s) <u>54</u> , <u>63</u>) (Stebbins, David) (Entered: 03/08/2011)
03/09/2011	<u>66</u>		ORDER granting <u>63</u> <i>Renewed Motion for Telephone Conference</i> setting telephone Conference set for 3/11/2011 09:00 AM. (Schroeppel, Kerry) (Entered: 03/09/2011)
03/11/2011	<u>67</u>		Minute Entry. Proceedings held before District Judge Richard E. Dorr: TELEPHONE CONFERENCE held on 3/11/2011. Discovery issues discussed. Order denying <u>54</u> motion for default judgment; denying <u>58</u> motion to strike. To order a transcript of this hearing please contact Jeannine Rankin, 417-225-7713. (Siegert, Karen) (Entered: 03/14/2011)

03/15/2011	<u>68</u>	CERTIFICATE OF SERVICE by All Defendants filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat &Air, LLC.(Allman, Gary) (Entered: 03/15/2011)
03/17/2011	<u>69</u>	CERTIFICATE OF SERVICE by All Plaintiffs <i>Sixth Request for Admissions</i> on behalf of Plaintiff David Stebbins.(Stebbins, David) (Entered: 03/17/2011)
03/25/2011	<u>70</u>	First MOTION for order <i>confirming an arbitration award</i> filed by All Plaintiffs. Suggestions in opposition/response due by 4/11/2011 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit E, # <u>5</u> Exhibit F, # <u>6</u> Supplement A)(Stebbins, David) (Entered: 03/25/2011)
03/30/2011	<u>71</u>	CERTIFICATE OF SERVICE by All Plaintiffs <i>for second request for production</i> on behalf of Plaintiff David Stebbins.(Stebbins, David) (Entered: 03/30/2011)
04/11/2011	<u>72</u>	CERTIFICATE OF SERVICE by All Defendants filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat &Air, LLC.(Allman, Gary) (Entered: 04/11/2011)
04/15/2011	<u>73</u>	Emergency MOTION for preliminary injunction <i>to disallow defense testimony</i> filed by All Plaintiffs. Suggestions in opposition/response due by 5/2/2011 unless otherwise directed by the court. (Attachments: # <u>1</u> Supplement)(Stebbins, David) (Entered: 04/15/2011)
04/18/2011	<u>74</u>	ORDER setting telephone conference for 4/22/2011 04:00 PM. (Schroeppel, Kerry) (Entered: 04/18/2011)
04/19/2011	<u>75</u>	SUGGESTIONS in opposition re <u>70</u> First MOTION for order <i>confirming an arbitration award</i> filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat &Air, LLC. Reply suggestions due by 5/6/2011 unless otherwise directed by the court (Related document(s) <u>70</u>) (Allman, Gary) (Entered: 04/19/2011)
04/19/2011	<u>76</u>	MOTION for hearing filed by Gary W. Allman on behalf of All Defendants. Suggestions in opposition/response due by 5/6/2011 unless otherwise directed by the court. (Allman, Gary) (Entered: 04/19/2011)
04/19/2011	77	CERTIFICATE of counsel by Gary W. Allman on behalf of All Defendants (Allman, Gary) (Entered: 04/19/2011)
04/19/2011	<u>78</u>	CERTIFICATE OF SERVICE by All Defendants filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat &Air, LLC.(Allman, Gary) (Entered: 04/19/2011)
04/19/2011	<u>79</u>	CERTIFICATE OF SERVICE by All Defendants filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat &Air, LLC.(Allman, Gary) (Entered: 04/19/2011)
04/19/2011	<u>80</u>	CERTIFICATE OF SERVICE by All Defendants filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat &Air, LLC.(Allman, Gary) (Entered: 04/19/2011)
04/19/2011	<u>81</u>	REPLY SUGGESTIONS to motion re <u>70</u> First MOTION for order

		<i>confirming an arbitration award</i> on behalf of Plaintiff David Stebbins. (Related document(s) <u>70</u>) (Stebbins, David) (Entered: 04/19/2011)
04/20/2011		NOTICE OF DOCKET MODIFICATION. A modification has been made to the document filed on 04/19/11 as Document No. 77, Certificate of counsel. The document has been deleted as the incorrect document was filed and contained e-mail print screens rather than full documents. Counsel will refile the correct document. This is a text entry only – no document is attached. (Anderson, Christy) (Entered: 04/20/2011)
04/20/2011	82	CERTIFICATE of counsel by Gary W. Allman on behalf of All Defendants (Allman, Gary) (Entered: 04/20/2011)
04/20/2011	<u>83</u>	CERTIFICATE OF SERVICE by All Defendants filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat & Air, LLC.(Allman, Gary) (Entered: 04/20/2011)
04/20/2011	<u>84</u>	SUGGESTIONS in opposition re <u>76</u> MOTION for hearing <i>to compel discovery</i> on behalf of Plaintiff David Stebbins. Reply suggestions due by 5/9/2011 unless otherwise directed by the court (Related document(s) <u>76</u>) (Stebbins, David) (Entered: 04/20/2011)
04/21/2011		NOTICE OF DOCKET MODIFICATION. A modification has been made to the document filed on 04/20/11 as Document No. 82, Certificate of Counsel. The document has been deleted as the incorrect document was filed and contained e-mail print screens rather than full documents (Duplicate of Doc No. 77). Counsel will refile the correct document. This is a text entry only – no document is attached. (Anderson, Christy) (Entered: 04/21/2011)
04/22/2011	<u>85</u>	Minute Entry. Proceedings held before District Judge Richard E. Dorr: TELEPHONE CONFERENCE held on 4/22/2011. To order a transcript of this hearing please contact Jeannine Rankin, 417-225-7713. (Siegert, Karen) (Entered: 04/22/2011)
04/22/2011	<u>86</u>	First MOTION for reconsideration re <u>70</u> First MOTION for order <i>confirming an arbitration award</i> filed by All Plaintiffs. Suggestions in opposition/response due by 5/9/2011 unless otherwise directed by the court. (Related document(s) <u>70</u>) (Stebbins, David) (Entered: 04/22/2011)
04/26/2011	<u>87</u>	SUGGESTIONS in opposition re <u>86</u> First MOTION for reconsideration re <u>70</u> First MOTION for order <i>confirming an arbitration award</i> filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat & Air, LLC. Reply suggestions due by 5/13/2011 unless otherwise directed by the court (Related document(s) <u>86</u>) (Allman, Gary) (Entered: 04/26/2011)
04/26/2011	<u>88</u>	CERTIFICATE OF SERVICE by All Defendants re <u>87</u> Suggestions in Opposition to Motion, filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat & Air, LLC. Related document: <u>87</u> Suggestions in Opposition to Motion, filed by Richardson Randal, Reliable Heat & Air, LLC.(Allman, Gary) (Entered: 04/26/2011)
04/26/2011	<u>89</u>	REPLY SUGGESTIONS to motion re <u>86</u> First MOTION for reconsideration re <u>70</u> First MOTION for order <i>confirming an arbitration award</i> on behalf of Plaintiff David Stebbins. (Related document(s) <u>86</u>) (Stebbins, David) (Entered: 04/26/2011)

04/26/2011	<u>90</u>	ORDER on results of teleconference denying <u>70</u> <i>Motion to Confirm Arbitration Award</i> ; denying <u>73</u> <i>Motion for Preliminary Injunction to Disallow Defense Testimony</i> . (Schroeppel, Kerry) (Entered: 04/26/2011)
04/27/2011	<u>91</u>	PRO SE MOTION for leave to Appeal in forma pauperis filed by David Stebbins. Suggestions in opposition/response due by 5/16/2011 unless otherwise directed by the court. (Burch, C. Steve) (Entered: 04/27/2011)
04/27/2011	<u>92</u>	PRO SE NOTICE OF APPEAL filed by David Stebbins as to <u>90</u> Order on Motion for Miscellaneous Relief, Order on Motion for Preliminary Injunction. Filing fee \$ 0, receipt number IFP. (Attachments: # <u>1</u> Envelope)(Burch, C. Steve) (Entered: 04/27/2011)
04/28/2011	<u>93</u>	ORDER denying <u>86</u> <i>Motion for Reconsideration</i> . (Schroeppel, Kerry) (Entered: 04/28/2011)
04/28/2011	<u>94</u>	First MOTION to clarify <i>order denying motion to confirm arbitration award</i> . filed by All Plaintiffs. Suggestions in opposition/response due by 5/16/2011 unless otherwise directed by the court. (Stebbins, David) (Entered: 04/28/2011)
04/28/2011	<u>95</u>	First MOTION to expedite <i>motion to appeal in forma pauperis (Document #91)</i> filed by All Plaintiffs. Suggestions in opposition/response due by 5/16/2011 unless otherwise directed by the court. (Stebbins, David) (Entered: 04/28/2011)
04/29/2011	<u>96</u>	Second MOTION for reconsideration re <u>90</u> Order on Motion for Miscellaneous Relief, Order on Motion for Preliminary Injunction filed by All Plaintiffs. Suggestions in opposition/response due by 5/16/2011 unless otherwise directed by the court. (Related document(s) <u>90</u>) (Stebbins, David) (Entered: 04/29/2011)
04/29/2011	<u>97</u>	SUGGESTIONS in support re <u>96</u> Second MOTION for reconsideration re <u>90</u> Order on Motion for Miscellaneous Relief, Order on Motion for Preliminary Injunction on behalf of Plaintiff David Stebbins. (Related document(s) <u>96</u>) (Stebbins, David) (Entered: 04/29/2011)
04/30/2011	<u>98</u>	SUGGESTIONS in support re <u>96</u> Second MOTION for reconsideration re <u>90</u> Order on Motion for Miscellaneous Relief, Order on Motion for Preliminary Injunction on behalf of Plaintiff David Stebbins. (Related document(s) <u>96</u>) (Stebbins, David) (Entered: 04/30/2011)
05/02/2011	<u>99</u>	SUGGESTIONS in support re <u>96</u> Second MOTION for reconsideration re <u>90</u> Order on Motion for Miscellaneous Relief, Order on Motion for Preliminary Injunction on behalf of Plaintiff David Stebbins. (Related document(s) <u>96</u>) (Stebbins, David) (Entered: 05/02/2011)
05/02/2011	<u>100</u>	ORDER denying <u>91</u> motion for leave to appeal in forma pauperis; denying <u>94</u> motion to clarify; denying as moot <u>95</u> motion to expedite. (Schroeppel, Kerry) (Entered: 05/02/2011)
05/03/2011	<u>101</u>	Third MOTION for reconsideration re <u>100</u> Order on Motion for Leave to Appeal in forma pauperis, Order on Motion to Clarify, Order on Motion to Expedite filed by All Plaintiffs. Suggestions in opposition/response due by 5/20/2011 unless otherwise directed by the court. (Related document(s) <u>100</u>) (Stebbins, David) (Entered: 05/03/2011)

05/03/2011	<u>102</u>		TRANSMISSION of Notice of Appeal Supplement to US Court of Appeals, 8th Circuit via electronic mail. Related document <u>92</u> Notice of Appeal. (Burch, C. Steve) (Entered: 05/03/2011)
05/06/2011	<u>103</u>		ORDER denying <u>101</u> <i>Third Motion for Reconsideration</i> . (Schroeppel, Kerry) (Entered: 05/06/2011)
05/08/2011	<u>104</u>		MOTION to compel <i>production of documents</i> filed by All Plaintiffs. Suggestions in opposition/response due by 5/26/2011 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit A)(Stebbins, David) (Entered: 05/08/2011)
05/10/2011	<u>105</u>		ORDER denying <u>104</u> motion to compel without prejudice; case stayed pending disposition of appeal. (Schroeppel, Kerry) (Entered: 05/10/2011)
05/10/2011	<u>106</u>		MOTION to clarify <i>order denying motion to compel discovery</i> filed by All Plaintiffs. Suggestions in opposition/response due by 5/27/2011 unless otherwise directed by the court. (Stebbins, David) (Entered: 05/10/2011)
05/11/2011	<u>107</u>		ORDER granting <u>106</u> <i>Motion to Clarify</i> ; all deadlines stayed pending outcome of appeal. (Schroeppel, Kerry) (Entered: 05/11/2011)
05/16/2011			USCA Case Number is 11-1977 for <u>92</u> Notice of Appeal filed by Reliable Heat & Air, LLC. (Anderson, Christy) (Entered: 05/16/2011)
06/02/2011	<u>108</u>		Second MOTION to compel <i>discovery</i> filed by All Plaintiffs. Suggestions in opposition/response due by 6/20/2011 unless otherwise directed by the court. (Stebbins, David) (Entered: 06/02/2011)
06/08/2011	<u>109</u>		CERTIFICATE OF SERVICE by All Defendants filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat & Air, LLC. (Attachments: # <u>1</u> Exhibit)(Allman, Gary) (Entered: 06/08/2011)
06/08/2011	<u>110</u>		SUGGESTIONS in support re <u>108</u> Second MOTION to compel <i>discovery</i> on behalf of Plaintiff David Stebbins. (Related document(s) <u>108</u>) (Stebbins, David) (Entered: 06/08/2011)
06/13/2011	<u>111</u>		USCA Judgment as to <u>92</u> Notice of Appeal filed by Reliable Heat & Air, LLC This is a preliminary judgment and/or opinion of U.S. Court of Appeals; jurisdiction is not recovered until the Mandate is issued by the U.S Court of Appeals. (Anderson, Christy) (Entered: 06/13/2011)
06/15/2011	<u>112</u>		NOTICE OF INTERLOCUTORY APPEAL (filed directly with USCA) by David Stebbins. (Anderson, Christy) (Entered: 06/15/2011)
06/15/2011			USCA Case Number is 11-8013 for <u>112</u> Notice of Interlocutory Appeal filed by David Stebbins. (Anderson, Christy) (Entered: 06/15/2011)
06/15/2011	<u>113</u>		USCA Judgment as to <u>112</u> Notice of Interlocutory Appeal filed by David Stebbins This is a preliminary judgment and/or opinion of U.S. Court of Appeals; jurisdiction is not recovered until the Mandate is issued by the U.S Court of Appeals. (Anderson, Christy) (Entered: 06/15/2011)
06/15/2011	<u>114</u>		MANDATE of US COURT OF APPEALS as to <u>112</u> Notice of Interlocutory Appeal filed by David Stebbins with mandate issued on 06/13/11. (Anderson, Christy) (Entered: 06/15/2011)

06/17/2011	<u>115</u>		MOTION to stay <i>to be reinstated</i> filed by All Plaintiffs. Suggestions in opposition/response due by 7/5/2011 unless otherwise directed by the court. (Stebbins, David) (Entered: 06/17/2011)
06/20/2011	<u>116</u>		AMENDED USCA Judgment as to <u>112</u> Notice of Interlocutory Appeal filed by David Stebbins. (Anderson, Christy) (Entered: 06/20/2011)
06/21/2011	<u>117</u>		ORDER denying <u>108</u> <i>Motion to Compel</i> ; denying <u>115</u> <i>Motion to Stay</i> . (Schroeppel, Kerry) (Entered: 06/21/2011)
07/27/2011	<u>118</u>		Second MOTION in limine , MOTION to stay <i>proceedings pending a Supreme Court decision</i> filed by All Plaintiffs. Suggestions in opposition/response due by 8/15/2011 unless otherwise directed by the court. (Stebbins, David) (Entered: 07/27/2011)
07/27/2011	<u>119</u>		MOTION to compel <i>discovery</i> filed by All Plaintiffs. Suggestions in opposition/response due by 8/15/2011 unless otherwise directed by the court. (Stebbins, David) (Entered: 07/27/2011)
07/28/2011	<u>120</u>		ORDER of US COURT OF APPEALS denying motion to stay mandate. (Anderson, Christy) (Entered: 07/28/2011)
07/28/2011	<u>121</u>		MANDATE of US COURT OF APPEALS as to <u>92</u> Notice of Appeal filed by Reliable Heat &Air, LLC with mandate issued on 07/27/11. (Anderson, Christy) (Entered: 07/28/2011)
07/29/2011	<u>122</u>		SECOND AMENDED SCHEDULING ORDER: Plaintiff's Motion to Reinstate Stay (Doc. 188) is denied. Plaintiff's Motion to Compel Discovery (Doc. 119) is granted in part. Each party shall respond to any currently pending discovery within 20 days. Discovery due by 8/31/2011. Dispositive Motions due by 9/30/2011. Pretrial Telephone Conference set for 2/10/2012 03:00 PM before District Judge Richard E. Dorr. Jury Trial set for 2/21/2012 09:00 AM in District Courtroom 1, Springfield (RED) before District Judge Richard E. Dorr. Signed on 7/29/11 by District Judge Richard E. Dorr. (Siegert, Karen) (Entered: 07/29/2011)
07/30/2011	<u>123</u>		MOTION to clarify <i>order compelling discovery</i> filed by All Plaintiffs. Suggestions in opposition/response due by 8/18/2011 unless otherwise directed by the court. (Stebbins, David) (Entered: 07/30/2011)
08/01/2011	<u>124</u>		MOTION for partial summary judgment filed by All Plaintiffs. Suggestions in opposition/response due by 8/25/2011 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H)(Stebbins, David) (Entered: 08/01/2011)
08/18/2011	<u>125</u>		SUGGESTIONS in opposition re <u>123</u> MOTION to clarify <i>order compelling discovery</i> filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat &Air, LLC. Reply suggestions due by 9/6/2011 unless otherwise directed by the court (Related document(s) <u>123</u>) (Allman, Gary) (Entered: 08/18/2011)
08/18/2011	<u>126</u>		CERTIFICATE OF SERVICE by All Defendants re <u>125</u> Suggestions in Opposition to Motion, filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat &Air, LLC. Related document: <u>125</u> Suggestions in Opposition to Motion, filed by Richardson Randal, Reliable

		Heat &Air, LLC.(Allman, Gary) (Entered: 08/18/2011)
08/19/2011	<u>127</u>	MOTION for sanctions <i>under Fed. R. Civ. P. Rule 37(b)</i> filed by All Plaintiffs. Suggestions in opposition/response due by 9/6/2011 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit A)(Stebbins, David) (Entered: 08/19/2011)
08/19/2011	<u>128</u>	CERTIFICATE OF SERVICE by All Defendants filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat &Air, LLC.(Allman, Gary) (Entered: 08/19/2011)
08/19/2011	<u>129</u>	SUGGESTIONS in support re <u>127</u> MOTION for sanctions <i>under Fed. R. Civ. P. Rule 37(b)</i> on behalf of Plaintiff David Stebbins. (Attachments: # <u>1</u> Exhibit A)(Related document(s) <u>127</u>) (Stebbins, David) (Entered: 08/19/2011)
08/19/2011	<u>130</u>	SUGGESTIONS in opposition re <u>124</u> MOTION for partial summary judgment filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat &Air, LLC. Reply suggestions due by 9/6/2011 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit)(Related document(s) <u>124</u>) (Allman, Gary) (Entered: 08/19/2011)
08/19/2011	<u>131</u>	CERTIFICATE OF SERVICE by All Defendants re <u>130</u> Suggestions in Opposition to Motion, filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat &Air, LLC. Related document: <u>130</u> Suggestions in Opposition to Motion, filed by Richardson Randal, Reliable Heat &Air, LLC.(Allman, Gary) (Entered: 08/19/2011)
08/19/2011	<u>132</u>	REPLY SUGGESTIONS to motion re <u>124</u> MOTION for partial summary judgment on behalf of Plaintiff David Stebbins. (Related document(s) <u>124</u>) (Stebbins, David) (Entered: 08/19/2011)
08/19/2011	<u>133</u>	SUGGESTIONS in support re <u>124</u> MOTION for partial summary judgment on behalf of Plaintiff David Stebbins. (Related document(s) <u>124</u>) (Stebbins, David) (Entered: 08/19/2011)
08/24/2011	<u>134</u>	ORDER setting hearing on motions <u>123</u> <i>Motion to Clarify</i> and <u>127</u> <i>Motion for Sanctions</i> ; telephonic motion hearing set 8/26/2011 03:00 PM. (Schroeppel, Kerry) (Entered: 08/24/2011)
08/26/2011	<u>135</u>	Minute Entry. Proceedings held before District Judge Richard E. Dorr: TELEPHONE CONFERENCE held on 8/26/2011. To order a transcript of this hearing please contact Jeannine Rankin, 417-225-7713. (Burch, C. Steve) (Entered: 08/26/2011)
08/26/2011	<u>136</u>	MOTION for declaratory judgment <i>on sufficiency of BFOQ defense</i> filed by All Plaintiffs. Suggestions in opposition/response due by 9/12/2011 unless otherwise directed by the court. (Attachments: # <u>1</u> Appendix A)(Stebbins, David) (Entered: 08/26/2011)
08/26/2011	<u>137</u>	LETTER from U.S. Supreme Court stating that a petition for a writ of certiorari has been filed (Case No. 11-5779) (Anderson, Christy) (Entered: 08/26/2011)
08/31/2011	<u>138</u>	

			ORDER on results of teleconference; denying <u>127</u> <i>Motion for Sanctions</i> ; granting in part and denying in part <u>123</u> <i>Motion to Clarify</i> .(Schroeppel, Kerry) (Entered: 08/31/2011)
09/02/2011	<u>139</u>		CERTIFICATE OF SERVICE by All Defendants filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat &Air, LLC.(Allman, Gary) (Entered: 09/02/2011)
09/02/2011	<u>140</u>		MOTION for summary judgment filed by Gary W. Allman on behalf of All Defendants. Suggestions in opposition/response due by 9/26/2011 unless otherwise directed by the court (Attachments: # <u>1</u> Appendix, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit)(Allman, Gary) (Entered: 09/02/2011)
09/02/2011	<u>141</u>		CERTIFICATE OF SERVICE by All Defendants filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat &Air, LLC.(Allman, Gary) (Entered: 09/02/2011)
09/08/2011	<u>142</u>		SUGGESTIONS in opposition re <u>140</u> MOTION for summary judgment on behalf of Plaintiff David Stebbins. Reply suggestions due by 9/26/2011 unless otherwise directed by the court (Related document(s) <u>140</u>) (Stebbins, David) (Entered: 09/08/2011)
09/08/2011	<u>143</u>		ORDER denying <u>124</u> <i>Motion for Partial Summary Judgment</i> . (Schroeppel, Kerry) (Entered: 09/08/2011)
09/08/2011	<u>144</u>		MOTION for order re <u>143</u> Order on Motion for Partial Summary Judgment filed by All Plaintiffs. Suggestions in opposition/response due by 9/26/2011 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit G, # <u>7</u> Exhibit H)(Related document(s) <u>143</u>) (Stebbins, David) (Entered: 09/08/2011)
09/09/2011	<u>145</u>		REPLY SUGGESTIONS to motion re <u>144</u> MOTION for order re <u>143</u> Order on Motion for Partial Summary Judgment filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat &Air, LLC. (Related document(s) <u>144</u>) (Allman, Gary) (Entered: 09/09/2011)
09/09/2011	<u>146</u>		CERTIFICATE of counsel re <u>145</u> Reply Suggestions to Motion, by Gary W. Allman on behalf of All Defendants (Allman, Gary) (Entered: 09/09/2011)
09/09/2011	<u>147</u>		REPLY SUGGESTIONS to motion re <u>144</u> MOTION for order re <u>143</u> Order on Motion for Partial Summary Judgment on behalf of Plaintiff David Stebbins. (Attachments: # <u>1</u> Exhibit A)(Related document(s) <u>144</u>) (Stebbins, David) (Entered: 09/09/2011)
09/15/2011	<u>148</u>		NOTICE of change of address by All Plaintiffs (Stebbins, David) (Entered: 09/15/2011)
10/03/2011	<u>149</u>		ORDER denying <u>144</u> <i>Motion for Extension of Rule 56(g) Declaration</i> . (Schroeppel, Kerry) (Entered: 10/03/2011)
10/04/2011	<u>150</u>		ORDER denying <u>136</u> <i>Motion for Declaration of Law</i> . (Schroeppel, Kerry) (Entered: 10/04/2011)
10/07/2011	<u>151</u>	15	ORDER granting <u>140</u> <i>Motion for Summary Judgment</i> ; case dismissed with

			prejudice, judgment entered in favor of defs on all counts. (Schroeppel, Kerry) (Entered: 10/07/2011)
10/07/2011	<u>152</u>	22	Second NOTICE OF APPEAL by David Stebbins. Filing fee \$ 455. (Stebbins, David) (Entered: 10/07/2011)
10/07/2011	<u>153</u>		Second MOTION for leave to Appeal in forma pauperis filed by David Stebbins. Suggestions in opposition/response due by 10/24/2011 unless otherwise directed by the court. (Attachments: # <u>1</u> Supplement)(Stebbins, David) (Entered: 10/07/2011)
10/11/2011	<u>154</u>		MOTION for reconsideration re <u>151</u> Order on Motion for Summary Judgment filed by All Plaintiffs. Suggestions in opposition/response due by 10/28/2011 unless otherwise directed by the court. (Related document(s) <u>151</u>) (Stebbins, David) (Entered: 10/11/2011)
10/11/2011	<u>155</u>	23	CLERK'S JUDGMENT (Siegert, Karen) (Entered: 10/11/2011)
10/12/2011	<u>156</u>		SUGGESTIONS in opposition re <u>153</u> Second MOTION for leave to Appeal in forma pauperis filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat & Air, LLC. Reply suggestions due by 10/31/2011 unless otherwise directed by the court (Related document(s) <u>153</u>) (Allman, Gary) (Entered: 10/12/2011)
10/12/2011	<u>157</u>		CERTIFICATE OF SERVICE by All Defendants re <u>156</u> Suggestions in Opposition to Motion, filed by Gary W. Allman on behalf of Defendants Richardson Randal, Reliable Heat & Air, LLC. Related document: <u>156</u> Suggestions in Opposition to Motion, filed by Richardson Randal, Reliable Heat & Air, LLC.(Allman, Gary) (Entered: 10/12/2011)
10/29/2011	<u>158</u>		REPLY SUGGESTIONS to motion re <u>153</u> Second MOTION for leave to Appeal in forma pauperis on behalf of Plaintiff David Stebbins. (Related document(s) <u>153</u>) (Stebbins, David) (Entered: 10/29/2011)
11/08/2011	<u>159</u>		LETTER from U.S. Supreme Court stating that the petition for a writ of certiorari has been denied (Case No. 11-5779). (Anderson, Christy) (Entered: 11/08/2011)
11/10/2011	<u>160</u>		ORDER denying <u>154</u> Motion for Reconsideration. (Schroeppel, Kerry) (Entered: 11/10/2011)
11/10/2011	<u>161</u>	24	ORDER granting <u>153</u> motion for leave to appeal in forma pauperis. (Schroeppel, Kerry) (Entered: 11/10/2011)
11/28/2011	<u>162</u>	26	TRANSMISSION of Notice of Appeal Supplement to US Court of Appeals, 8th Circuit via electronic mail. Related document <u>152</u> Notice of Appeal. (Siegert, Karen) (Entered: 11/28/2011)

DAVID STEBBINS,)
)
 Plaintiff,)
)
 v.) **Case No. 10-3305-CV-S-RED**
)
 RELIABLE HEAT & AIR, LLC, et al.,)
)
 Defendants.)

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do is explain [his] disability to them and let them live with it.” (Defendant’s Ex. B).

On September 27, 2010, Plaintiff filed his complaint alleging that his termination violated the Americans with Disabilities Act (“ADA”). Now before the Court is Defendants’ Motion for Summary Judgment.

STANDARD OF REVIEW

According to Fed. R. Civ. P. 56(a), summary judgment may be granted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” When ruling on a motion for summary judgment, the Court should view the facts in the light most favorable to the adverse party and allow the adverse party the benefit of all reasonable inferences to be drawn from the evidence.” *Reed v. ULS Corp*, 178 F.3d 988, 990 (8th Cir. 1999). A party can show that a fact is not genuinely disputed by “showing that the materials cited do not establish the . . . presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1)(B). The evidence that may be considered when ruling on a motion for summary judgment includes: depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, interrogatory answers or other materials. Fed. R. Civ. P. 56(c)(1)(A). Plaintiff argues in his response that “Randall Richardson’s affidavit is not proof of anything other than what we agree to,” however, this is not the law. Affidavits are recognized as appropriate support for allegations contained in a motion for summary judgment. Fed. R. Civ. P. 56(c)(1)(A).

ANALYSIS

Plaintiff alleges that his termination violated the ADA. Thus, 42 U.S.C. § 12112 is the

relevant statute as it concerns “discriminat[ion] against a qualified individual on the basis of disability in regard to . . . the discharge of employees.” 42 U.S.C. § 12112(a). Absent direct evidence of disability discrimination, to recover on a claim of discrimination under § 12112, the Plaintiff must show: “(1) an ADA-qualifying disability; (2) qualifications to perform the essential functions of her position with or without reasonable accommodation; and (3) an adverse employment action due to her disability.” *Norman v. Union Pacific RR Co.*, 606 F.3d 455, 459 (8th Cir. 2010). Plaintiff has presented no direct evidence of disability discrimination; therefore, in order to recover on his claim, he must prove the elements set forth above. However, Plaintiff has failed to present evidence on at least one element required to recover on a claim of discrimination under § 12112. Moreover, Plaintiff has failed to present sufficient evidence on his hostile work environment claim since he has not established a prima facie case of discrimination.

I. Plaintiff has set forth no evidence that he is qualified to perform the essential functions of his position with or without reasonable accommodations.

An individual is qualified if he satisfies the “requisite skill, experience, education, and other job-related requirements, and ‘can perform the essential job functions, with or without reasonable accommodation.’” *Rehrs v. Iams Co.*, 486 F.3d 353, 356 (8th Cir. 2007)(quoting *Cravens v. Blue Cross & Blue Shield of Kan. City*, 214 F.3d 1011, 1016 (8th Cir. 2000)). Essential job functions “are the fundamental job duties” and the “employer has the burden of showing a particular job function is an essential function of the job.” *Rehrs*, 486 F.3d at 356. When considering whether a particular function is an essential function of the job the Court considers, but is not limited to, the following factors:

- (1) the employer’s judgment as to which functions are essential; (2) written job descriptions prepared before advertising or interviewing applicants for the job; (3) the amount of time spent on the job performing the function; (4) the consequences

of not requiring the incumbent to perform the function; (5) the terms of the collective bargaining agreement; (6) the work experience of past incumbents in the job; and (7) the current work experience of incumbents in similar jobs. *Id.*

Moreover, “[a]n employer’s judgment on this question is highly probative.” *Alexander v. Northland Inn*, 321 F.3d 723, 727 (8th Cir. 2003).

Here, Plaintiff was employed by Defendants as a customer service representative. Plaintiff’s job description was to receive service calls from customers, to schedule appointments using a paper-and-pen version of a database, and to dispatch technicians to fix the problems that the customers complained about. Therefore, a majority of Plaintiff’s duties included communicating to customers. It is undisputed that Defendants’ business is a service business. It necessarily is based on customer service as evidenced by the need to take calls from customers, assess their needs, and schedule an appointment to fix their problem. Customer satisfaction and repeat business are essential to the success of the Defendants’ business. Accordingly, considering factors one through four, Defendants have established that customer service and, thus, the ability to properly communicate with customers, constituted an essential function of Plaintiff’s job.

Plaintiff acknowledged in his amended interrogatory answer that he offended customers; however, Plaintiff argues that the fact that he made customers uncomfortable did not make him unable to perform an essential function of the job. Nonetheless, it is an uncontroverted fact that, during Plaintiff’s employment with Defendants, Plaintiff was rude to Defendants’ customers. Accordingly, Plaintiff was unable to perform an essential function of his job - the ability to properly communicate with customers. No genuine dispute as to any material fact exists as to this issue. Therefore, the Court must now determine whether Plaintiff was able to perform this essential function of his job with a reasonable accommodation.

According to the ADA, Plaintiff has the burden to prove that he “could perform the essential functions of [his] position with a reasonable accommodation.” *Alexander*, 321 F.3d at 727. However, “an employer is under no obligation to relocate the essential functions of a position that a qualified individual must perform.” *Id.* at 728. Plaintiff claims his Asperger Syndrome causes him to be oblivious to social cues and say things that are rude and offend people. We will assume that to be true for purposes of this discussion.

Plaintiff’s job for Defendants involved Plaintiff being the first point of contact for customers who called Defendants to purchase their services. It is undisputed that Plaintiff was rude to customers to the extent that some were offended. Plaintiff states he cannot help it and that, because of his disability (Asperger Syndrome), his “tactlessness” would continue to be part of his ability to talk with people. Plaintiff’s suggested accommodation for his problem is, “So, in other words, if the customers are upset about my tactlessness, the only thing the Defendants can do is explain my disability to them and let them live with it.” Common sense is a relevant factor to consider in this discussion. This option proposed by Plaintiff would necessarily involve either a second employee continuously monitoring Plaintiff’s phone calls so he could step in and talk to the customer when Plaintiff was rude or Defendants hoping that offended customers would somehow let them know that they were upset so Defendants could then try to explain Plaintiff’s “disability.” Moreover, under any accommodation proposed by Plaintiff, the customer is still offended first and the accommodation is simply damage control. Accordingly, neither of these alternatives would be a reasonable accommodation. *See Moritz v. Frontier Airlines, Inc.*, 147 F.3d 784, 788 (8th Cir. 1998)(affirming the district court’s grant of summary judgment and conclusion that providing the Plaintiff an assistant to aid her in her duties was not a reasonable accommodation).

Further, Plaintiff has set forth no evidence, other than his own statements, that his proposed accommodation is reasonable. Moreover, he has not set forth any evidence which supports his contention that he could perform the essential functions of his position with his proposed accommodation. *See Heaser v. Toro Co.*, 247 F.3d 826, 832 (8th Cir. 2001)(concluding that Plaintiff's claim under the ADA failed as Plaintiff failed to present sufficient evidence showing her proposed accommodation was reasonable and, instead, based her argument on her own conjecture). Accordingly, summary judgment is appropriate on Plaintiff's claim under the ADA as Plaintiff has not presented any evidence to support the fact that he is qualified to perform the essential functions of his position with or without reasonable accommodations and, thus, no genuine issue of material fact exists. Fed. R. Civ. P. 56(c)(1)(B).

As dismissal of this case is appropriate based on the above analysis, the Court will not consider Defendants' other grounds for summary judgment on Plaintiff's ADA claim.

II. Plaintiff's hostile work environment claim fails as Plaintiff did not establish a prima facie case of discrimination.

Lastly, Plaintiff's hostile work environment claim, insofar as it is a separate claim, is dismissed as Plaintiff's failure to "establish a prima facie case of discrimination suffices to render her . . . argument meritless." *Moritz*, 147 F.3d at 788; *See also Cody v. CIGNA Healthcare of St. Louis, Inc.*, 139 F.3d 595, 598 (8th Cir. 1998)("In all constructive discharge and harassment cases under the ADA, . . . the plaintiff must first make out a prima facie case of discrimination or face the dismissal of her claim.").

CONCLUSION

WHEREFORE, for the above stated reasons, this Court **GRANTS** Defendants' Motion for Summary Judgment. The above captioned case is **DISMISSED WITH PREJUDICE**. Judgment

is entered in favor of Defendants on all counts.

IT IS SO ORDERED.

DATED: October 7, 2011

/s/ Richard E. Dorr

RICHARD E. DORR, JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

JUDGMENT IN A CIVIL CASE

DAVID STEBBINS,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 10-3305-CV-S-RED
)	
RELIABLE HEAT & AIR, LLC, et al.)	
)	
Defendants.)	

- Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- X Decision by Court. This action came to determination before the Court. The issues have been determined and a decision has been rendered.

After careful consideration, the Court **GRANTS** Defendants' Motion for Summary Judgment (Doc. 140). This case is **DISMISSED WITH PREJUDICE**. Judgment is entered in favor of Defendants on all counts.

IT IS SO ORDERED.

Date: October 7, 2011	<u>Ann Thompson</u>
	Clerk of Court

Entered on: October 11, 2011	<u>s/ Karen Siegert</u>
	(By) Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

DAVID STEBBINS,

Plaintiff,

v.

RELIABLE HEAT & AIR, LLC, et al.,

Defendants.

)
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Case No. 10-3305-CV-S-RED

ORDER

Before the Court is Plaintiff's Motion and Affidavit for Permission to Appeal In Forma Pauperis (Doc. 153). Plaintiff seeks to appeal this Court's denial of his motion to confirm arbitration award and this Court's grant of summary judgment in favor of Defendants.

Title 28, United States Code, § 1915 states in part:

[A]ny court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefore.

However, "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). Courts judge "good faith" from an objective standard. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). Good faith is not present if the issues presented for review are frivolous. *Id.*

Plaintiff has previously presented to this Court a Motion to Appeal In Forma Pauperis (Doc. 91) regarding this Court's denial of his motion to confirm arbitration award. This Court denied Plaintiff's request in its Order of May 2, 2011 (Doc. 100). The Court denied Plaintiff's motion, in part, because the issue presented for appeal was frivolous. The Court stands by its Order of May

2, 2011 and, thus, notes that the court's denial of Plaintiff's motion to confirm arbitration award is not a basis upon which the Court would grant Plaintiff provisional leave to proceed in forma pauperis on appeal. Nonetheless, Plaintiff lists this Court's grant of summary judgment in favor of Defendants as an additional ground for his appeal. Therefore, pursuant to 28 U.S.C. § 1915 and based on the information in the motion and affidavit, the Court will grant Plaintiff provisional leave to proceed in forma pauperis on appeal. Accordingly, Plaintiff's motion is **GRANTED**.

IT IS SO ORDERED.

DATED: November 10, 2011

/s/ Richard E. Dorr

RICHARD E. DORR, JUDGE
UNITED STATES DISTRICT COURT

**U.S. COURT OF APPEALS - EIGHTH CIRCUIT
NOA SUPPLEMENT**

Case Name: DAVID STEBBINS v. RICHARDSON RANDAL, et al.

Case Number: 10-3305-CV-S-RED

Please return files and documents to: U.S. District Court
1400 U.S. Courthouse
222 John Q. Hammons Parkway
Springfield, MO 65806
417/865-3869

Person to contact with questions about this appeal: Clerk's Office, 417-865-3869

Length of Trial: N/A

Financial Status: Fee Paid: No
If NO, has IFP been granted: Yes
Is there a pending motion for IFP? No

Counsel:

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Branson, MO 65615
(417) 332-2800
Fax: 417-332-1008
Email: garywallman@gmail.com

Are there any other pending post-judgment motions: no

Is there keen local interest in this case?: no

Do you recommend a simultaneous opinion release? no

Is there a court reporter in this case? Yes

If yes, please identify: Jeannine Rankin, 222 N. John Q. Hammons Pkwy, Springfield, MO 65806, 417 225-7713.